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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,385	02/01/2000	PHILIP C. ASHMAN	BWTIUSA	3888

7590 05/20/2002

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EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 05/20/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

T.D-17

Office Action Summary

Application No.

09/381,385

Applicant(s)

ASHMAN ET AL.

Examiner

Marc A Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-7,12 and 15-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,12 and 15-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

WITHDRAWN REJECTIONS

1. The 35 U.S.C. 112 second paragraph rejections of Claims 1, 6 and 15, of record on page 2 of the previous Action, are withdrawn.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'inwardly of the barrier layer' is indefinite, because it is unclear which side of the barrier layer is being claimed. For purposes of examination, it will be assumed that the layer is on either side of the barrier layer.

4. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'intermediate barrier layer' is indefinite, as the claim defines only two layers.

5. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

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the invention. The abbreviation 'CIE whiteness' is also indefinite because the abbreviation has not been defined in the claim. The phrase 'an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30' is also indefinite, because the difference between aspect ratio and average aspect ratio is unclear. For purposes of examination, the phrase will be assumed to mean 'an aspect ratio.'

6. Claims 1 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'core barrier layer' is indefinite because the claim defines only two layers. Correction and / or clarification is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 5 – 7, 12 and 15 – 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Sacks et al. (U.S. Patent No. 4,528,235). Sacks et al. disclose a multilayer sheet for packaging oxygen – sensitive materials (Sacks also, therefore, teaches a container; column 2, lines 17 – 33; column 3, lines 13 – 15). The sheet comprises three layers of high density polyethylene comprising 10 – 50% of a talc filler having a platelet shape (column 3, lines 27 –

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48; column 5, lines 15 – 25; column 6, lines 55 – 63). Each layer constitutes a barrier layer (therefore vapor impermeable) which is non – polar (column 6, lines 4 – 27). The intermediate layer constitutes a tie layer between the other two layers. The thickness of each layer is between 10 and 50 microns (column 2, lines 58 – 67). The aspect ratio of the talc is at least 5 (each platelet has a diameter of 1 to 8 micrometers, and the thickness is 0.5 micrometers; column 2, lines 58 – 67). Sacks teaches that laminate is coextruded (column 3, lines 65 – 68); the making of the laminate therefore constitutes a method of reducing absorption (of oxygen) into a laminated material used for the manufacture of containers, comprising arranging for at least one further layer other than the barrier layer. With regard to the claimed aspect of the barrier layer being a ‘vapor impermeable non – polyolefin’, Sacks et al. teach that high density polyethylene is equivalent to polycaprolactam (which is an amorphous polyamide material; column 2, lines 18 – 33) as a layer of the structure; the claimed aspect of the barrier layer being a ‘vapor impermeable non – polyolefin’ therefore reads on Sacks et al.

ANSWERS TO APPLICANT’S ARGUMENTS

9. Applicant’s arguments regarding the 35 U.S.C. 112 second paragraph rejection of Claims 2, 12, 16 – 18, 20, 23, 24 and 26, of record on page 2 of the previous Action, have been considered and have been found to be persuasive. The rejections are therefore withdrawn.

Applicant’s arguments regarding the 35 U.S.C. 112 second paragraph rejection of Claims 1, 6 and 15, the 35 U.S.C 102(b) rejection of Claims 1, 5 – 7, 12, 16 – 17 and 20 – 26 as being anticipated by Sacks et al. (U.S. Patent No. 4,528,235), the 35 U.S.C 103(a) rejection of Claims 15, 18 and 19 as being unpatentable over Sacks et al. and the 35 U.S.C 103(a) rejection of Claim 15 as being unpatentable over Sacks et al. in view of Newman et al. (European Patent No.

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0275102) have been considered but have been found to be unpersuasive for the reasons set forth below.

Applicant argues, on page 7 of Paper No. 7, that amended Claims 1, 6 and 15 overcome the 35 U.S.C. 112 second paragraph rejection. However, the term 'flexible' is clearly a relative term, which is not defined in the specification or claims; it therefore renders the claim indefinite.

Applicant also argues, on page 9, that amended Claims 1, 5 – 7, 12, 16 – 17 and 20 – 26 overcome the 35 U.S.C. 102(b) rejection as being anticipated by Sacks et al., because Sacks et al. do not disclose a non – polyolefin barrier layer, and furthermore do not disclose a polyamide barrier layer. However, Sacks et al. teach that polyamide is equivalent to high density polyethylene as a layer of the structure (column 2, lines 18 – 33); the claimed aspect of the barrier layer being non – polyolefin and the barrier layer being a polyolefin resin having a platelet talc filler therefore reads on Sacks et al.

Applicant also argues, on page 12, that the combination of Sacks et al with Newman et al is improper because Sacks et al are concerned with films having increased resistance to vapor permeability, whereas Newman et al are concerned with providing a thermally stable container which are withstand heat generated inside a microwave oven. However, as stated on page 2 of the previous Action, both Sacks et al. and Newman et al. are directed to the use of films comprising polyolefinic layers and non – polyolefinic barrier layers; it would therefore have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to fabricate a container from the multilayer polyolefinic sheet disclosed by Sacks et al. for the purpose of preparing foods for heating in microwave ovens as taught by Newman et al.

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Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

Marc Patterson
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[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

5/20/02